

Judge Lasnik

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

GUY CRUZ, JR.,

Defendant,

and

TODD COLE,

Third-Party Petitioner.

No. CR19-125 RSL

**STIPULATION AND ORDER
SETTLING THIRD PARTY CLAIM
TO FIREARMS SUBJECT TO
FORFEITURE**

The United States and Third Party Claimant Todd Cole, agree to the following terms to settle the interest that Mr. Cole asserted in various firearms that were forfeited by the Defendant in this case.

I. RELEVANT PROCEDURAL FACTS

The Defendant, GUY CRUZ, JR, agreed to forfeit firearms and ammunition pursuant to the Plea Agreement he entered on October 17, 2019. Dkt No.24. On March 6, 2020, the Court entered a Preliminary Order of Forfeiture forfeiting the Defendant's

1 interest in the firearms. Dkt. No. 36. Pursuant to 21 U.S.C. § 853(n)(1) and Fed. R.
2 Crim. P. 32.2(b)(6)(C), for thirty (30) days, the United States published notice of the
3 Preliminary Order of Forfeiture and its intent to dispose of the firearms in accordance
4 with law. Dkt. No. 24. That notice informed any third parties claiming an interest in the
5 firearms that they were required to file a petition with the Court within sixty (60) days of
6 the notice's first publication on March 11, 2020. *Id.* Pursuant to Fed. R. Crim. P.
7 32.2(b)(6)(A), the United States also sent notices and copies of the Preliminary Order to
8 potential claimants and on or about December 18, 2018, Mr. Cole filed a claim in which
9 he asserted that he was the rightful owner of various firearms seized at the time of
10 Defendant's arrest. Dkt. No. 41.

11 The United States, on or about April 13, 2020, sent an additional set of notices to
12 potential claimants identified through Bureau of Alcohol, Tobacco, Firearms, and
13 Explosives ("ATF") ownership tracing records.

14 All persons and entities believed to have an interest in the firearms have been
15 given proper notice of the intended forfeiture and no competing claims have been filed,
16 and the time for filing competing claims for the firearms to be returned, has expired. *See*
17 Dkt. (CR19-125 RSL); *see* 21 U.S.C. § 853(n)(2), Federal Rule of Criminal Procedure
18 32.2(b)(6), and Supplemental Rule G(5)(a)(ii) of the Federal Rules of Civil Procedure.

19 The United States and Mr. Cole have completed discovery and have reached the
20 following recommended settlement agreement.

21 II. AGREEMENT

22 1. This Settlement Agreement and Consent to Final Order of Forfeiture (the
23 "Agreement") is entered into between the United States of America and Third-Party
24 Petitioner Todd Cole ("the Parties") pursuant to the following terms:

25 2. The Parties acknowledge that this Agreement is a compromise of a claim
26 without adjudication of any issue of fact or law. The Parties acknowledge that this
27 Agreement cannot be construed as, or asserted by, any party or other person or entity, to
28 be an admission of liability or a concession of innocence.

3. Further, Mr. Cole acknowledges that ATF must confirm that Mr. Cole has no identifiable criminal history that would preclude him from possessing any firearms at this time prior to the return of a firearm to him.

4. Further, Mr. Cole affirms that no one currently living in his residence or on the property at which he resides is prohibited from possessing a firearm.

5. Based on proof of ownership from firearm tracing records (E-Trace) showing Mr. Cole purchased the Steyr 9mm as well as a telephonic statement Mr. Cole gave to Officer Scrivo of the Auburn Police Department regarding the theft of his Steyr 9mm firearm from his storage unit, the United States agrees that Mr. Cole has a vested interest in the subject firearm identified below, pursuant to 21 U.S.C. § 853(n)(6)(A).

Therefore, the United States agrees to return the following firearm:

- Steyr 9mm Semi-automatic pistol bearing serial number 24280, as well as the unloaded, original magazine clip.

6. Mr. Cole understands and agrees that the subject firearm will be returned to him in its current condition, as is.

7. The records maintained by the ATF for the rest of the firearms (“remaining firearms”) included in Mr. Cole’s claim do not reflect that Mr. Cole was a purchaser of the firearms. As there is no record which reasonably provides for, or establishes, evidence of Mr. Cole’s ownership of the remaining firearms, or of the assorted ammunition seized on December 23, 2017, (“ammunition”), Mr. Cole agrees to withdraw his claim to the following firearms and ammunition:

- One Sig Sauer .45 caliber semi-automatic pistol bearing serial number G377199, and any associated ammunition; and
- One Charter Arms .38 caliber revolver bearing serial number 1522337, and any associated ammunition.

8. Mr. Cole understands and agrees that this Stipulation fully and finally resolves his claim to the various firearms and ammunition. Mr. Cole waives any right to further litigate or pursue his claim, in this or any other proceeding, judicial or

1 administrative. Upon return of the Steyr 9mm Semi-automatic pistol bearing serial
2 number 24280, referenced above, Mr. Cole agrees to release and hold harmless the
3 United States, its agents, representatives, and/or employees, as well as any involved state
4 or local law enforcement agencies, their agents, representatives, and/or employees, from
5 any and all claims Mr. Cole may possess, or that could arise, based on the seizure,
6 detention, and return of the subject firearms.

7 9. The United States and Mr. Cole agree they will each bear their own costs
8 and attorneys' fees associated with the seizure, detention, and return of the subject
9 firearm, the handling of Mr. Cole's claim and this Agreed Settlement. Mr. Cole expressly
10 waives any right to seek attorneys' fees pursuant to 28 U.S.C. § 2465.

11 10. Mr. Cole agrees not to oppose a Final Order of Forfeiture as to the all the
12 remaining firearms and ammunition, including listed in paragraph seven above to which
13 Mr. Cole is waiving any claim.

14 11. The United States and Mr. Cole agree the terms of this Stipulation are
15 subject to review and approval by the Court, as provided in the proposed Order below. If
16 the Court enters the proposed Order, Mr. Cole shall be relieved from further participation

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1 in this criminal ancillary proceeding, other than to implement the terms of this Agreement
2 or unless specifically directed by an order of the Court. A violation of any term or
3 condition of this Stipulation shall be construed to be a violation of that Order.

4 Respectfully Submitted,


5 BRIAN T. MORAN
6 United States Attorney

7
8 DATED: August 25, 2020

/s/ Matthew H. Thomas

9 MATTHEW H. THOMAS
10 Assistant United States Attorney
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16 DATED: August 25th, 2020

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Todd Cole, Claimant
18 9805 NE 116th Street #A-257.
19 Kirkland, Washington 98034
20 Telephone: (206) 861-4402
21 E-mail: todcole7@gmail.com

22 *permission to e-file obtained
23 via email on August 25, 2020.

ORDER

The Court has reviewed the above Agreed Settlement between the United States and Third-Party Claimant Todd Cole, which settles the interest Mr. Cole has asserted in firearms, Dkt. No. 41, seized in the criminal case and in which the Court has already forfeited the Defendant's interest to the United States. Dkt. No. 36.

Therefore, The Court approves the Agreed Settlement and its terms.

IT IS SO ORDERED.

DATED this 27th day of August, 2020.



THE HON. ROBERT S. LASNIK
UNITED STATES DISTRICT JUDGE